IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MATTHEW SMITH 16 Lattimer Rd. W Shiloh, OH 44878	)	CASE NO. JUDGE
Plaintiff,	)	VERIFIED COMPLAINT FOR MONEY DAMAGES, DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION
vs.	)	
SANDUSKY NEWSPAPERS, INC. 314 W. Market St. Sandusky, OH 44870	)	(Jury Demand Indorsed Hereon)
and	)	
COURTNEY ASTOLFI c/o Sandusky Register 314 W. Market St. Sandusky, OH 44870	)	
and	)	
MATTHEW WESTERHOLD c/o Sandusky Register 314 W. Market St. Sandusky, OH 44870	)	
and	)	
TROY SHIPMAN 5005 Losee Rd. Apt. # 3102 North Las Vegas, NV 89081	)	

	)
and	)
	)
RAYMOND YOUNG	)
909 W. Adams St.	)
Sandusky, OH 44870	)
	)
and	)
	)
CITY OF SANDUSKY	)
222 Meigs Ave.	)
Sandusky, OH 44870	)
	)
and	)
	)
DETECTIVE JOHN POWELL	)
c/o Sandusky Police Department	)
222 Meigs Ave.	)
Sandusky, OH 44870	)
	)
Defendants.	)

Now comes Plaintiff, Matthew Smith, by and through his counsel, John W. Gold (#0078414) and for his Complaint, hereby states and alleges as follows:

JURISDICTION AND VENUE

1. This Court has original subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 which provides that the District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States and 28 U.S.C. § 1367 which gives the district court supplemental jurisdiction over state law claims.

2. Pursuant to 28 U.S.C. §§ 1391(b)(1)-(2), venue properly lies in this district, where all Defendants reside and in which a substantial part of the events giving rise to the lawsuit took place.

PARTIES

3. Plaintiff Matthew Smith is a resident of State of Ohio and employed as a supervisor for Davis & Pinchot Investments, LLC ("DPI").

4. Defendant City of Sandusky is a political subdivision in Erie County, Ohio.

5. Defendant John Powell is a detective employed by the City of Sandusky and whose principal place of business is in Erie County, Ohio.

6. Defendant Sandusky Newspapers, Inc. is a for-profit corporation organized under the laws of the State of Ohio which publishes a newspaper known as the "Sandusky Register" and whose principal place of business is in Erie County, Ohio.

7. Defendant Courtney Astolfi is employed as a reporter by Defendant Sandusky Newspapers, Inc. and whose principal place of business is in Erie County, Ohio.

8. Defendant Matthew Westerhold is employed by Defendant Sandusky Newspapers, Inc. as the Editor of the Sandusky Register and whose principal place of business is in Erie County, Ohio.

9. Defendant Raymond Young resides in Erie County, Ohio.

10. Defendant Troy Shipman resides in Erie County, Ohio or Clark County, Nevada

GENERAL ALLEGATIONS

11. On May 4, 2016 Steve Akers from DPI reported a theft with the Sandusky Police Department arising from two checks each in the amount of $4,000.00 that were cashed at First National Bank of Bellevue.

12. Check No. 12314 was cashed on 4/16/2016 and Check No. 12328 was cashed on 5/3/2016. Both checks were written to "Ray Young", an employee of DPI and a Defendant to this lawsuit.

13. Lt. Danny Lewis of the Sandusky Police department, interviewed Steve Akers.

14. Akers explained that the checks were given to Defendant Troy Shipman by Plaintiff Matthew Smith to pay landfill fees as per the company's usual practice.

15. Ordinarily, the landfill would enter the amount of the landfill fees and place their name in the payable field using their company stamp.

16. It was discovered that several recent receipts from the landfill indicated that payment was made in cash.

17. The cancelled checks at issue herein indicated Defendant Raymond Young's drivers license information handwritten on the front, leading Akers to conclude that Raymond Young cashed the checks.

18. Akers told Lt. Lewis that he believed Troy Shipman gave Raymond Young the checks to cash, whereupon the duo absconded with the money.

19. That same day, Lt. Lewis met with Raymond Young at Young's residence, whereupon Young falsely told Lt. Lewis that Plaintiff Matthew Smith asked him to cash the checks at First National Bank of Bellevue because Smith did not have an ID.

20. Raymond Young further falsely stated that it was Plaintiff Matthew Smith who picked him up to cash the checks at the bank, and that the money was for "petty cash" for the company safe.

21. Lt. Lewis followed up with Akers, who advised that it is Troy Shipman, not Matthew Smith, who picks up the garbage on Wednesdays from the rental units and takes it back to the landfill.

22. Akers also advised that upon further investigation an additional five checks totaling $18,000.00 had been cashed without consent. Those cancelled checks were scanned and incorporated into Lt. Lewis's report.

23. The combined total of the fraudulently cashed checks was $22,000.00

24. On May 9th, Lt. Lewis received video from FNB which positively identified Raymond Young as the person who cashed the checks on two occasions. Video from April 16, 2016 shows Raymond Young exiting a dark colored Chevy Trail Blazer with Nevada plates registered to Troy Shipman. Video from May 3, 2016 shows Raymond Young exiting a blue Ford pickup truck also registered to Troy Shipman.

25. On May 10, 2016 Lt. Lewis followed back up Raymond Young, who then changed his story and falsely stated to Lt. Lewis that Matthew would drop the checks off to him and that he would then call Troy Shipman for a ride to the bank, whereupon Raymond Young would cash the checks and give the money back to Matthew Smith.

26. Lt. Lewis next met with Plaintiff Matthew Smith, who corroborated Akers's assertion that Troy Shipman, not RaymondYoung, was given the checks for the landfill. Smith further advised Lt. Lewis that the office keeps security footage onsite which should show Smith giving checks to Shipman.

27. Security camera footage provided to the investigating officers clearly shows Plaintiff Matthew Smith handing checks to Troy Shipman.

28. Plaintiff Smith also advised Lt. Lewis that he never called Raymond Young on the telephone and produced his phone records to the investigating officers to corroborate that fact.

29. Plaintiff Smith later provided the Sandusky Police Department with his phone records, and those records reveal that Plaintiff Smith never made any telephone calls to Raymond Young.

30. Lt. Lewis followed up with Troy Shipman that same day. Shipman falsely told Lt. Lewis that several times since he has worked for DPI, Smith would give him checks in the morning, but before he could go to the landfill, Smith would contact him and meet him somewhere. Shipman further falsely stated that Smith would then ask for the check back and give him cash to pay the land fill. Shipman falsely stated that this happened several times.

31. Troy Shipman admitted driving Raymond Young to the bank on several occasions but denied that he knew Young was cashing checks.

32. During a subsequent interview with Sandusky Police Detective John Powell on June 14, 2016, Troy Shipman changed his story, this time stating that he knew Raymond Young was cashing checks when he drove him to the bank.

33. Troy Shipman also falsely accused Plaintiff of running an "insurance scam" during that interview.

34. Detective Powell interviewed Plaintiff Matthew Smith on June 14, 2016. Plaintiff Matthew Smith provided a handwriting sample at Powell's request.

35. On information and belief, Plaintiff Matthew Smith's handwriting sample rules him out as the person who wrote Raymond Young's name on the stolen checks.

36. Detective Powell did not collect a handwriting sample from any person other than Plaintiff Matthew Smith.

37. On June 14, 2016 Detective Powell charged Plaintiff Matthew Smith with theft and arrested him without probable cause.

38. Detective Powell did not obtain a warrant for Plaintiff Matthew Smith's arrest or, alternatively, did not demonstrate the existence of probable cause for Smith's arrest before obtaining the warrant.

39. The following day, on June 15, 2016 the Sandusky Register published the arrest in an article headlined "Man steals $22K from Sandusky rental business." The article included Plaintiff Matthew Smith's name and photograph.

40. The article was also published on the internet through the Sandusky Register's website.

41. The article was written by Defendant Courtney Astolfi.

42. The article was approved for publication by the Sandusky Register's editor-in-chief, Defendant Matthew Westerhold.

43. In the article, Lt. Powell is quoted during an interview as falsely saying "He basically duped a tenant into cashing checks – he took advantage of him."

44. A "Google" search for the internet article returns a link to the Sandusky Register's website entitled "Man steals $22K from Sandusky rental business."

45. Upon learning of Plaintiff's arrest, Jared Davis, a managing member of DPI, called Detective Powell three times to tell him that Plaintiff worked for DPI for more 8 years has handled hundreds of thousands of dollars in collected rent payments without incident and advised that it was wholly unreasonable to believe Plaintiff to be the culprit.

46. On August 15, 2016, during a pretrial conference relating to the theft charge, the City of Sandusky prosecutor dismissed the charges against Plaintiff Matthew Smith due to a lack of evidence.

47. On August 31, 2016 following the dismissal of the theft charges, Jared Davis from DPI contacted Defendant Courtney Astolfi from the Sandusky Register requesting that the June 15, 2016 article be redacted because it was untrue and harming Plaintiff and DPI's reputation in the local community.

48. On September 2, 2016 Astolfi responded and acknowledged that she was aware of the dismissal and would update the story.

49. In the meantime, the website version of the article received a high volume of comments that were critical of the article.

50. Later, those negative comments were deleted from the website and the internet article's headline was changed to "Shiloh man charged for $22K theft."

51. Courtney Astolfi, editor Matt Westerhold and the Sandusky Register never retracted or updated the article as promised by Astolfi in her September 2, 2016 email.

52. On December 17, 2016 Davis followed up with Astolfi to inquire into why the article was never updated as promised, but received no response from Astolfi.

53. Davis also copied editor Matt Westerhold on his communications to Astolfi but received no response from him either.

54. The Sandusky Register makes Plaintiff's likeness available for purchase online, including duplicate photographs, mouse pads, coffee mugs, photo luggage tags, photo key tags, buttons, and photo magnets.

55. The Sandusky Register has received proceeds from the sale of merchandise containing Plaintiff's likeness on its website.

COUNT I

42 § U.S.C. § 1983 – FALSE ARREST

54. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

55. Defendants City of Sandusky and John Powell did not have probable cause to arrest Plaintiff Matthew Smith on June 14, 2016.

56. As a result of Plaintiff's false arrest, Plaintiff's Fourth and Fourteenth Amendment right to be free from unreasonable search and seizure was violated.

57. As a direct and proximate result of Defendants' unlawful actions, Plaintiff has suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment which shall continue for the foreseeable future.

COUNT II

OHIO LAW - LIBEL

58. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

59. Defendants Sandusky Register, Courtney Astolfi and Matthew Westerhold, and John Powell, without privilege, caused the publication of false statements accusing Plaintiff Matthew Smith of theft.

60. The false publication that Plaintiff Matthew Smith stole $22,000.00 from his employer reflects upon Plaintiff Matthew Smith's character by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession.

61. The false publication that Plaintiff Matthew Smith stole $22,000.00 from his employer constitutes libel *per se.*

62. As a direct and proximate result of Defendants Sandusky Register, Courtney Astolfi and Matthew Westerhold, and John Powell's unlawful actions, Plaintiff Matthew Smith has suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation, embarrassment and irreparable harm which shall continue for the foreseeable future.

COUNT III

OHIO LAW - FAILURE TO PUBLISH CORRECTION – R.C. § 2739.14

63. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

64. On August 31, 2016 and December 17, 2016 Jared Davis, on behalf of Plaintiff Smith, made demand upon Defendants Courtney Astolfi, Matt Westerhold and the Sandusky Register to retract the defamatory June 14, 2016 article and truthfully report that the charges against Plaintiff were dismissed.

65. Defendants Courtney Astolfi, Matt Westerhold and the Sandusky Register refused to retract the article or remove the malicious and defamatory statements uttered by Detective Powell about Plaintiff.

66. Defendants Courtney Astolfi, Matt Westerhold and the Sandusky Register failed to print and circulate the requested omissions and additions in the same color of ink, from like type, with headlines of equal prominence, occupying a like space in the same portion of the newspaper as was used in printing the original article complained of, and shall be given the same publicity in all respects and, as nearly as possible, the same circulation as such original article as required by Ohio Revised Code § 2739.14.

67. Ohio Revised Code § 2739.14 provides an implied private cause of action for a newspaper's failure to comply with the statute's requirements.

68. As a direct and proximate result of Defendants Sandusky Register, Courtney Astolfi and Matthew Westerhold, and John Powell's failure to comply with R.C. 2739.14, Plaintiff Matthew Smith has suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation, embarrassment and irreparable harm which shall continue for the foreseeable future.

COUNT IV

OHIO LAW – RIGHT OF PUBLICITY R.C. § 2741.06

69. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

70. Plaintiff has sole ownership over his right of publicity in his likeness, image and photograph.

71. Plaintiff's likeness, image and photograph has commercial value to Defendant Sandusky Newspapers, Inc. as set forth in the rates for merchandise bearing Plaintiff's photograph on its website.

72. Defendant Sandusky Newspapers, Inc. used and continues to use Plaintiff's likeness, image and photograph for a commercial purpose in connection with the sale of merchandise on its website.

73. Defendant Sandusky Newspapers, Inc. did not have Plaintiff's written consent to use his likeness, image and photograph for a commercial purpose at any time.

74. As a direct and proximate result of Defendants Sandusky Newspapers, Incc's unauthorized use of Plaintiff's likeness, image and photograph, Plaintiff has suffered, and will

continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation, embarrassment and irreparable harm which shall continue for the foreseeable future.

COUNT V

OHIO LAW – MISAPPROPRIATION OF LIKENESS

75. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

76. Defendant Sandusky Newspapers, Inc., without privilege or Plaintiff's consent, misappropriated Plaintiff's likeness for its own use or benefit.

77. As a direct and proximate result of Defendants Sandusky Newspapers, Incc's unauthorized use of Plaintiff's likeness, image and photograph, Plaintiff has suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation, embarrassment and irreparable harm which shall continue for the foreseeable future.

COUNT VI

OHIO LAW - SLANDER
(as to Defendant John Powell)

78. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

79. On or about June 14, 2016 Sandusky Police Detective John Powell was interviewed by Courtney Astolfi of the Sandusky Register about Plaintiff Smith's arrest.

80. During the interview, Detective Powell, without privilege, falsely told Astolfi "[Smith] basically duped a tenant into cashing checks – he took advantage of him."

81. Detective Powell also falsely told Astolfi that he was able to track the theft of the stolen checks back to Plaintiff Matthew Smith.

82. The false utterances made by Detective Powell to Astolfi that Plaintiff Matthew Smith stole $22,000.00 from his employer reflects upon Plaintiff Matthew Smith's character by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession.

83. The false utterances made by Detective Powell to Astolfi that Plaintiff Matthew Smith stole $22,000.00 from his employer constitutes slander *per se*.

84. As a direct and proximate result of Detective Powell's unlawful actions, Plaintiff Matthew Smith has suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment which shall continue for the foreseeable future.

COUNT VII

OHIO LAW - SLANDER
(as to Defendants Raymond Yung and Troy Shipman)

85. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth

86. On or about May 4, 2016 Defendant Raymond Young falsely told Lt. Lewis that Plaintiff Matthew Smith asked him to cash checks at First National Bank of Bellevue because Smith did not have an ID.

87. Defendant Young also falsely told Lt. Lewis that he gave the funds from the cashed checks to Plaintiff Matthew Smith.

88. On or about May 10, 2016 Defendant Troy Shipman falsely told Lt. Lewis that Plaintiff Matthew Smith stole $10,000.00 from DPI's safe.

89. Defendant Shipman further falsely told Lt. Lewis that Plaintiffs Matthew Smith and DPI were conducting an "insurance scam."

90. On or about June 14, 2016 Defendant Raymond Young falsely told Detective John Powell that Plaintiff Matthew Smith had put him up to cashing the checks at the bank.

91. On or about June 14, 2016 Defendant Troy Shipman falsely told Detective Powell that Plaintiff Matthew Smith would periodically give him checks for the landfill and then meet him later that day to retrieve the checks and instead give Shipman cash for the landfill costs.

92. Defendant Shipman also falsely told Detective Powell that Plaintiffs Matthew Smith and DPI were involved in an "insurance scam."

93. Defendants Young and Shipman's false statements were uttered to conceal their own criminal conduct.

94. The false utterances made by Defendants Young and Shipman to the Lt. Davis and Detective Powell reflects upon Plaintiff Matthew Smith's character by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession.

95. The false utterances made by Defendants Young and Shipman to Lt. Davis and Detective Powell constitute slander *per se.*

96. As a direct and proximate result of Defendants Young and Shipman's unlawful actions, Plaintiff Matthew Smith has suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment which shall continue for the foreseeable future.

COUNT VIII

18 U.S.C. § 1964 – CIVIL RICO VIOLATIONS

97. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

98. Defendants Raymond Young and Troy Shipman have operated an enterprise ("the Enterprise") through the conduct of a pattern of racketeering activity in violation of 18 U.S.C. § 1962, such enterprise calculated to steal money from DPI through the commission of bank fraud.

99. Predicate acts which constitute "racketeering activity" pursuant to 18 U.S.C. § 1965 include, inter alia, bank fraud in violation of 18 U.S.C. § 1344.

100. The Enterprise committed the acts of bank fraud when Defendants Young and Shipman combined to unlawfully cash DPI checks at First National Bank of Bellevue on January 27, 2016, February 4, 2016, March 2, 2016, March 25, 2016, April 5, 2016, April 16, 2016, and May 3, 2016.

101. Plaintiff has been injured in his business, property and business reputation as a result of the aforementioned acts.

COUNT IX

(DECLARATORY JUDGMENT & INJUNCTIVE RELIEF)

102. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

103. At all times relevant herein it was and continues to be the policy and custom of Defendant Sandusky Newspapers, Inc. and its agents to publish slanderous and defamatory statements from law enforcement officials when researching stories pertaining to arrests and criminal proceedings.

104. At all times relevant herein it was and continues to be the policy and custom of Defendant Sandusky Newspapers, Inc. and its agents to electronically publish articles on its website pertaining to arrests and criminal proceedings that are knowingly misleading and/or untrue due to information acquired by Defendant subsequent to the date of the original publication.

105. At all times relevant herein it was and continues to be the policy and custom of Defendant Sandusky Newspapers, Inc. and its agents to refuse requests made pursuant to Ohio Revised Code § 2739.14. to publish corrections to knowingly misleading and/or untrue statements published by Defendant.

106. At all times relevant herein it was and continues to be the policy and custom of Defendant Sandusky Newspapers, Inc. and its agents to misappropriate the likenesses of others for commercial purposes in violation of R.C. § 2741.06 and the Ohio common law by offering for sale reproductions of photographs appearing on the Sandusky Register website for display on merchandise sold through the Sandusky Register website.

107. Plaintiff is entitled to a declaratory judgment finding that Defendant Sandusky Newspapers, Inc. and its agents custom and policy of publishing slanderous and defamatory statements from law enforcement officials when researching stories pertaining to arrests and criminal proceedings constitutes libel *per se.*

108. Plaintiff is entitled to a declaratory judgment finding that Defendant Sandusky Newspapers, Inc. and its agents custom and policy of electronically publishing articles on its website pertaining to arrests and criminal proceedings that are knowingly misleading and/or untrue due to information acquired by Defendant subsequent to the date of the original publication constitutes libel *per se.*

109. Plaintiff is entitled to a declaratory judgment finding that Defendant Sandusky Newspapers, Inc. and its agents practice of misappropriating the likenesses of others for commercial purposes in by offering for sale reproductions of photographs appearing on the Sandusky Register website for display on merchandise sold through the Sandusky Register website violation of R.C. § 2741.06 and the Ohio common law.

110. Plaintiff is entitled to injunctive relief enjoining Defendant Sandusky Newspapers, Inc. continued practice of publishing slanderous and defamatory statements from law enforcement officials when researching stories pertaining to arrests and criminal proceedings and ordering the immediate retraction of and/or correction to all such publications as required by Ohio Revised Code § 2739.14.

111. Plaintiff is entitled to injunctive relief enjoining Defendant Sandusky Newspapers, Inc. continued practice of electronically publishing articles on its website pertaining to arrests and criminal proceedings that are knowingly misleading and/or untrue due to information acquired by Defendant subsequent to the date of the original publication and ordering the immediate retraction and/or correction of all such publications as required by Ohio Revised Code § 2739.14.

112. Plaintiff is entitled to injunctive relief enjoining Defendant Sandusky Newspapers, Inc.'s continued misappropriation of he likenesses of others for commercial purposes by offering for sale reproductions of photographs appearing on the Sandusky Register website for display on merchandise sold through the Sandusky Register website.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendants as to Counts I through VIII as follows:

A. Compensatory damages in excess of $75,000.00;

B. Statutory damages in excess of $75,000.00;

C. Punitive damages in excess of $75,000.00;

D. Attorney's fees and costs; and

E. Such other relief as this Court deems appropriate.

As to Count IX, Plaintiff prays for a declaratory and injunctive order:

A. Finding that Defendant Sandusky Newspapers, Inc. and its agents custom and policy of publishing slanderous and defamatory statements from law enforcement officials when researching stories pertaining to arrests and criminal proceedings constitutes libel *per se;*

B. Finding that Defendant Sandusky Newspapers, Inc. and its agents custom and policy of electronically publishing articles on its website pertaining to arrests and criminal proceedings that are knowingly misleading and/or untrue due to information acquired by Defendant subsequent to the date of the original publication constitutes libel *per se*;

C. Finding that Defendant Sandusky Newspapers, Inc. and its agents practice of misappropriating the likenesses of others for commercial purposes in by offering for sale reproductions of photographs appearing on the Sandusky Register website for display on merchandise sold through the Sandusky Register website violation of R.C. § 2741.02 and the Ohio common law.

D. Enjoining Defendant Sandusky Newspapers, Inc. continued practice of publishing slanderous and defamatory statements from law enforcement officials when researching stories pertaining to arrests and criminal proceedings and ordering the immediate retraction of and/or correction to all such publications as required by Ohio Revised Code § 2739.14;

E. Enjoining Defendant Sandusky Newspapers, Inc. continued practice of electronically publishing articles on its website pertaining to arrests and criminal proceedings that are knowingly misleading and/or untrue due to information acquired by Defendant subsequent to the date of the original publication and ordering the immediate retraction and/or correction of all such publications as required by Ohio Revised Code § 2739.14.

F. Enjoining Defendant Sandusky Newspapers, Inc.'s continued misappropriation of he likenesses of others for commercial purposes by offering for sale reproductions of photographs appearing on the Sandusky Register website for display on merchandise sold through the Sandusky Register website pursuant to R.C. § 2741.07.

Respectfully submitted,

JOHN W. GOLD, LLC

/s/ John W. Gold

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JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

/s/ John W. Gold

____

JOHN W. GOLD (#0078414)